

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DEBRA A. HART**

Claimant

VS.

**AUTOMOTIVE CONTROLS CORPORATION**

Respondent  
Self-Insured

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Docket No. 206,759

**ORDER**

Respondent appeals from an April 11, 1996 preliminary hearing Order wherein Administrative Law Judge John D. Clark awarded claimant preliminary benefits.

**ISSUES**

- (1) Did claimant meet with personal injury by accident arising out of and in the course of her employment?
- (2) Did claimant give timely notice of injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds claimant has met her burden of proving that she suffered injury as a result of her work with respondent. The claimant's testimony and the medical evidence, particularly the report of orthopedic surgeon William D. Smith, M.D. and the office records of orthopedic surgeon V. C. Patel, M.D., support this conclusion. Furthermore, there is no medical expert testimony to the contrary.

Respondent points to claimant's prior left forearm injury and to her subsequent employment as possibly contributing to claimant's present condition. There is some circumstantial evidence to indicate an intervening injury or aggravation at the M & M Moulders plant. Claimant began working there in September or October of 1995. Her symptoms worsened to the point where she again sought medical treatment. She was also taken off work. However there is no medical evidence linking claimant's activities at M & M Moulders to causing either her condition or a permanent aggravation thereof. The medical evidence in the record thus far is consistent in relating claimant's injury to her employment with respondent.

Claimant alleges she sustained bilateral upper extremity injuries each and every day worked from February through August 1995. Her last day of work for the respondent was August 2, 1995. Claimant testified to an onset of symptoms in February 1995 with a progressive worsening thereafter. She sought medical treatment in March 1995 on her own and was prescribed a splint which she wore to work. This generated a report by her supervisor, Cathy O'Mara, which verifies claimant's ongoing complaints. Ms. O'Mara's report dated March 14, 1995 refers only to left upper extremity complaints. However,

claimant testifies she described symptoms in both upper extremities to Ms. O'Mara as well as Bill Scribner (another supervisor) and to a supervisor named Russell. Cathy O'Mara sent claimant to the company nurse who gave her elastic wrist supports. Although Ms. O'Mara's testimony contradicts claimant's with regard to whether she complained of both wrists or only one, the March 15, 1995 office notes of the Cherryvale Clinic and the April 4, 1995 office notes of Dr. Patel describe pain in both wrists and arms. The Administrative Law Judge was obviously persuaded by the claimant's testimony. The Appeals Board agrees and finds that notice of accident was given in March 1995.

The Appeals Board finds for purposes of preliminary hearing that claimant has established a work-related injury and that notice of accident was timely given as to both upper extremities.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 11, 1996 Order of Administrative Law Judge John D. Clark is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS  
Garry W. Lassman, Pittsburg, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director